

**REMARKS**

Applicants submit this Reply in response to the non-final Office Action mailed January 19, 2010. Before this Reply, claims 23-44 were pending, of which claims 23 and 33 were independent. By this Reply, Applicants amend claims 23-25, 33-35, and 44. No new matter has been added. As a result, claims 23-44 remain pending, of which claims 23, 25, and 33 are independent.

In the Office Action, the Examiner rejected claim 44 under 35 U.S.C. § 101 and rejected claims 23, 24, 32-34, and 42 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2004/0037230 ("Kroboth").<sup>1</sup> In addition, the Examiner identified allowable subject matter in claims 25-31, 35-41, 43, and 44, but objected to these claims for being dependent on rejected base claims. Applicants respectfully traverse the pending rejections and request reconsideration of the present application in view of the foregoing claim amendments and the following remarks.

**Rejection of Claim 44 Under 35 U.S.C. § 101**

The Office Action rejected claim 44 under 35 U.S.C. § 101 for being directed to non-statutory subject matter because the claim could allegedly encompass transmission media "that takes the *transitory* form of signals, acoustic, carrier or light waves, such as those generated during radio waves and infrared data communications." Office Action at 2-3. Although Applicants disagree, to advance prosecution, they have amended claim 44 as recommended by the Examiner to recite: "A non-transitory computer-

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<sup>1</sup> The Office Action contains a number of statements characterizing the Applicants' disclosure, including the claims, and the related art. Regardless of whether any such statement is specifically addressed herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

readable medium storing instructions for execution by a ....” Accordingly, Applicants request the withdrawal of the rejection of claim 44 under Section 101.

**Rejection of Claims 23, 24, 32-34, and 42 Under 35 U.S.C. § 102(e)**

Applicants respectfully traverse the 35 U.S.C. § 102(e) rejections of claims 23, 24, 32-34, and 42 as being anticipated by Kroboth. Claims 23 and 33 are the only independent claims in this rejection statement. In order to properly establish an anticipation rejection under 35 U.S.C. § 102(e), every element of the claims at issue must be found in the applied prior-art reference, either expressly or under principles of inherency. See M.P.E.P. § 2131. Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” *Id.* (quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1126, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989)). Kroboth fails to disclose or render obvious at least the subject matter of independent claims 23 and 33 for several reasons.

Independent claim 23 is patentably distinguishable from Kroboth in that it recites, for example, a method for evaluating traffic dispersion associated with at least one exchange in a communications network, comprising:

incrementally generating traffic quantum  
representative of said traffic at an evaluation module  
independent from a plurality of exchanges and nodes of the  
communications network, based on receiving, at the  
evaluation module as an input directly from the at least one  
exchange, a measured traffic volume of said incoming traffic  
directed towards a given destination;

analyzing, at the evaluation module, said set of  
routing rules generated by the at least one exchange;

measuring, at the evaluation module, the volume of said incoming traffic directed toward said given destination; and

producing, at the evaluation module, a distribution of said traffic quantum over said links in said plurality, the distribution thus obtained being statistically representative of the dispersion of said incoming traffic over said plurality of links at said exchange.

In contrast, Kroboth generally discloses “a system displaying heterogeneous measurement data, including collecting heterogeneous scalar measurement data from a plurality of devices connected to the network, normalizing the collected heterogeneous scalar measurement data . . . and displaying the . . . heterogeneous scalar measurement data.” Kroboth ¶ [0005]. To this end, Kroboth discloses that “[d]ata collectors 710 . . . are connected to network 700, and they, as a whole, collect heterogeneous scalar measurement data from [network] devices . . . .” *Id.* ¶ [0018]. Kroboth further discloses that “[t]hreshold organizer 702 is also connected to network 700, receives the collected data from the data collectors, if a collector is necessary to receive the network device scalar measurement, and normalizes the collected heterogeneous scalar measurement data . . . .” *Id.*

In the Office Action, the Examiner contends that Kroboth’s threshold organizer 702 corresponds to the claimed “evaluation module.” The rejection statement concludes that the threshold organizer 702 meets the claimed requirement for receiving a measured traffic volume of the incoming traffic as an input directly from the at least one exchange because it receives that traffic volume from data collectors 710, which receive it as an input directly from the at least one exchange. Office Action at 4. Claim 23, as amended, however, now recites “receiving, at the evaluation module as an input

directly from the at least one exchange, a measured traffic volume of said incoming traffic directed towards a given destination...” By disclosing at best that separate data collectors 710—not the threshold organizer 702 cited in the Office Action—receive measured traffic volume directly from an exchange, Kroboth fails to anticipate amended claim 23. Nor does Kroboth provide any reason or suggestion for its threshold organizer 702 to receive measured traffic volume directly as an input from an exchange, as detailed in Applicants’ response to the previous Office Action.

In addition, nothing in Kroboth discloses or renders obvious “analyzing, at the evaluation module, said set of routing rules generated by the at least one exchange,” as recited in amended claim 23. As explained in Applicants’ specification, the preferred embodiment analyzes routing rules within an evaluation module to help generate a statistical estimation of traffic dispersion. See, e.g., Spec. at 4. In contrast to what is claimed, Kroboth does not disclose any analyzing of routing rules by its threshold organizer 702. The Examiner contends that Kroboth discloses producing a distribution of traffic quantum “according to said set of routing rules” because any measured “congestion event will occur base[d] on the routing decision ma[d]e by [a] plurality of exchange[s] #748, 746, etc.” Office Action at 5. But receiving data that may reflect prior application of routing rules by the exchange is not “analyzing, at the evaluation module, said set of routing rules generated by the at least one exchange” in the process of producing a statistical representation of traffic quantum.

Accordingly, because Kroboth does not disclose every element of claim 23—particularly, “incrementally generating traffic quantum ... based on receiving, at the evaluation module as an input directly from the at least one exchange, a measured

traffic volume of said incoming traffic directed towards a given destination” and “analyzing, at the evaluation module, said set of routing rules generated by the at least one exchange”—it cannot anticipate that claim. Independent claim 33, although different in scope from claim 23, contains similar recitations, which Kroboth likewise fails to teach or suggest. Claims 24, 32, 34, and 42 depend from one of allowable independent claims 23 or 33 and should be allowable at least due to their dependence from an allowable base claim. Therefore, for at least these reasons, the Examiner should withdraw the 35 U.S.C. § 102(e) rejection of claims 23, 24, 32-34, and 42.

#### **Allowable Subject Matter**

Applicants acknowledge with appreciation the Examiner’s indication that claims 25-31, 35-41, 43, and 44 are drawn to allowable subject matter. Applicants have amended claim 25 to place it in independent form, thereby removing the Examiner’s objections to claims 25-31. Those claims, therefore, are allowable. Based at least on the preceding arguments, dependent claims 35-41, 43, and 44, which depend directly or indirectly from independent claim 33, are also allowable due to the patentability of claim 33 over Kroboth.

#### **Conclusion**

In view of the foregoing remarks, Applicants submit that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicants therefore request the entry of this Reply, the Examiner’s reconsideration and reexamination of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge  
any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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By: \_\_\_\_\_



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